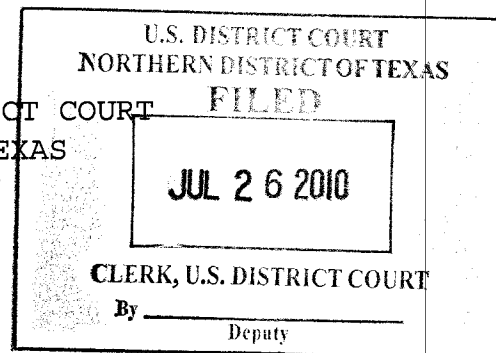


IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION



TRANSCOM ENHANCED
SERVICES, INC.,

Plaintiff,

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VS.

NO. 4:09-CV-755-A

QWEST CORPORATION,

Defendant.

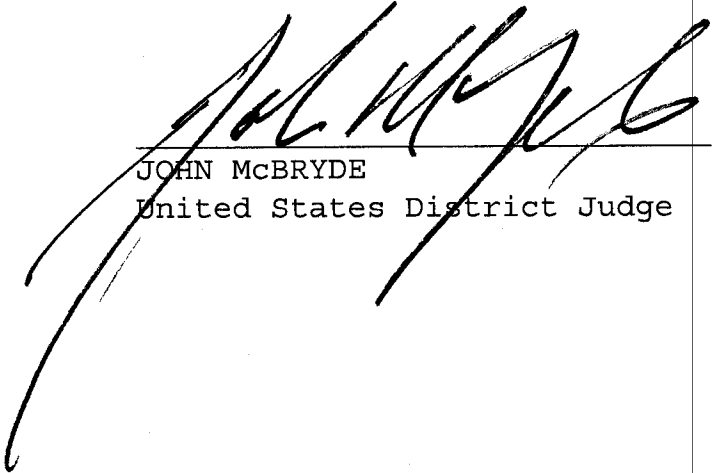
MEMORANDUM OPINION
and
ORDER

Now before the court is the motion of plaintiff, Transcom Enhanced Services, Inc., to dismiss the counterclaims brought against it by defendant, Qwest Corporation, for failure to state a claim upon which relief may be granted pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. A substantial portion of the motion is devoted to a discussion of exemptions from the payment of access charges for entities determined to be enhanced service providers under applicable Federal Communications Commission statutes and regulations. Plaintiff seeks dismissal of most of defendant's counterclaims based on its contention that defendant cannot prevail on those claims because plaintiff is an enhanced service provider. However, a determination of whether or not plaintiff is an enhanced service provider is central to

resolution of plaintiff's claims by which it instituted this action. The court concludes that determination of this critical issue in deciding a motion to dismiss is premature. Therefore,

The court ORDERS that plaintiff's motion to dismiss defendant's counterclaims be, and is hereby, denied.

SIGNED July 26, 2010.



JOHN McBRYDE
United States District Judge